

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSHUA T., a minor, by his conservator, First
National Bank in Las Vegas, New Mexico,
ALICIA TALAMANTE, ANNIE TALAMANTE and
DAVID TALAMANTE,

Plaintiffs,

vs.

No. CIV 05-867 JB/RLP

KEY ENERGY SERVICES, INC.,

Defendant.

MEMORANDUM OPINION

THIS MATTER comes before the Court on the Unopposed Motion to Approve Final Settlement, filed April 27, 2006 (Doc. 33). The Court held a hearing on the motion on May 10, 2006. The primary issue is whether the Court should approve the summary of disbursements and the settlement to which the parties and the guardian ad litem have agreed. Because the disbursements appear reasonable and because they appear to be in the best interests of the Plaintiff, Joshua Talamante, a minor, the Court will approve the proposed disbursements and the final settlement.

PROCEDURAL BACKGROUND

The Court appointed William E. Snead as the guardian ad litem. See Stipulated Order Appointing Guardian Ad Litem at 2, filed September 14, 2005 (Doc. 12). Plaintiff First National Bank in Las Vegas reports that it has arrived at a settlement on Joshua Talamante's behalf in this matter. See Unopposed Motion at 1. The total to be paid is \$8,000,000.00 as follows:

- a. Cash in the amount of \$7,000,000.00, distributed as follows: (i) \$2,919,340.46 in attorney fees, tax, and costs; and (ii) payment of \$4,080,659.54 to Comerica Bank & Trust National Association to set up an irrevocable settlement trust for Joshua's

benefit in the manner and form set forth in the trust agreement. First National has provided the court with a copy both of a summary of the payments and of the trust agreement.

b. Upon settling the trust, Defendant Key Energy will be discharged from any further obligations except those described in the settlement agreement. As provided in the trust document, Comerica Bank & Trust, National Association, through its offices in Phoenix, Arizona, will serve as the Trustee. Subject to the terms of the trust, Comerica will work in conjunction with Robert W. Baird and Company, a financial investment firm, also with an office in Phoenix, Arizona. The trust provides for replacement of this trustee if, in the future, Joshua's best interests would be served.

c. In addition, Key Energy will pay a structured settlement, qualifying for tax free income, in the amount of \$2,716.00 per month beginning July 1, 2006, with such payment to be increased by three percent annually for Joshua's life or for forty years, whichever is longer. This payment will be made to the trust. The present value of this structure is \$1,000,000.00. The obligation to make the periodic payments will be assigned to MetLife Tower Resources Group and funded by an annuity contract issued by Metropolitan Life Insurance Company, rated A+XV by A.M. Best and AA by Standard & Poor's. Any periodic payments to be made after Joshua's death shall be made to his estate. After the age of majority, Joshua may submit a change of beneficiary in writing to MetLife Tower. If Joshua does not so designate any person or entity, such payments shall be made to Joshua's estate. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to MetLife Tower. The designation must be in a form acceptable to MetLife Tower.

Id. at 2-3.

Key Energy also will pay the gross sum of \$1,000,000.00 to the remaining Plaintiffs: as follows: (i) \$700,000.00 to Plaintiff Alicia Talamante; (ii) \$75,000.00 to Plaintiff Annie Talamante; and (iii) \$225,000.00 to Plaintiff David Talamante. Id. at 3. In addition to the protections afforded by the trust company's management of the trust funds, the trust itself provides for the appointment of a person to serve as the "trust protector," who will be charged with reviewing the annual reports, the performance of the trust company, and the financial advisor, and to act should changes be advisable. See id. Upon completion of this settlement, First National will be relieved of further duties. See id. Key Energy will pay Mr. Snead's fees up to a maximum of \$10,000.00. See id. at

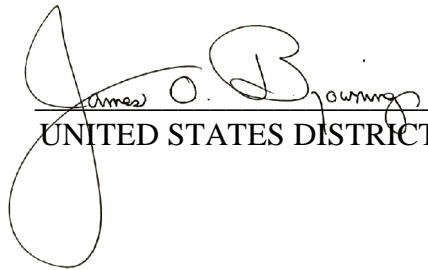
4.

First National, conservator for Joshua, moves the Court to approve the final settlement made on Joshua's behalf. See id. First National also requests that the Court approve the fees, gross receipt taxes, and costs set forth in the summary to be paid to the law office of Carpenter, Stout & Ransom, Ltd. See id. Key Energy's counsel concurs in this motion. See id.

Mr. Snead approves of this Final Settlement and recommends that the Court favorably consider the structure of the settlement. See id. Mr. Snead and the parties agree that Joshua's best interests would be served if the settlement proceeds paid on his behalf were in the form of a Permanent Settlement Trust with preservation and spendthrift provisions ensuring that these assets will be available for Joshua's benefit throughout his lifetime. See id. at 1. First National represents that the evidence in this case demonstrates that regardless whether Joshua will be legally competent at the age of majority, the judgment centers of his brain – the frontal lobe – are impaired to the extent that such protection is warranted. See id.

ANALYSIS

The Court has reviewed carefully the summary of disbursements that First National has submitted, as well as the chronological list of costs incurred for the Talamantes. The Court has also studied the trust agreement for the Joshua S. Talamante Trust. The Court concludes that the proposed disbursements are appropriate and reasonable, and that approval of the Final Settlement will be in Joshua's best interest. The Court will therefore approve the Final Settlement. The Court will enter a separate document that will constitute the Court's order on this motion.



UNITED STATES DISTRICT JUDGE

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